

REMARKS

Claim 15 is amended. No claims are cancelled or added. The amendments to the claims as indicated herein do not add any new matter to this application. Furthermore, amendments made to the claims as indicated herein have been made to exclusively improve readability and clarity of the claims and not for the purpose of overcoming alleged prior art. Each issue raised in the Office Action mailed March 26, 2008 is addressed hereinafter.

I. ISSUES NOT RELATING TO PRIOR ART—CLAIM 15

The Office Action objected to claim 15 as having an informality. Present claim is free of informalities. Reconsideration is respectfully requested.

II. ISSUES RELATING TO PRIOR ART—CLAIMS 1-35

Claims 1-35 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Baekelmans et al. (US Patent No. 7,080,141) in view of Menard et al. (US Patent No. 7,065,566). The rejection is respectfully traversed.

The Office Action states a rejection of claims 1-35, but claims 1-9, 11-20, 22-30, and 32-35 are pending. The rejection is assumed to apply only to the non-canceled claims.

The Office Action fails to present a *prima facie* case of unpatentability under 35 U.S.C. § 103(a) because Baekelmans is not citable in this application under 35 U.S.C. § 103(c)(1) and must be removed as a reference.

Under 35 U.S.C. § 103(c)(1), as amended by the CREATE Act of 2004, which also extended the applicability of 35 U.S.C. § 103(c)(1) to all applications pending on its effective date of December 10, 2004, a reference that qualifies as a reference by date only under 35 U.S.C. § 102(a) or (e) is not citable against an application under 35 U.S.C. § 103(a) if the invention described in the application for patent and the invention described in the prior art reference applied against the application were commonly owned by, or subject to an obligation of

assignment to, the same person, at the time the invention in the application for patent was made. See USPTO “Frequently Asked Questions” about 103(c), <http://www.uspto.gov/web/offices/dcom/olia/aipa/103cfaq.htm>. The present application is assigned to Cisco Technology, Inc., a wholly owned subsidiary of Cisco Systems, Inc., San Jose, California, as stated in the assignment recorded in the USPTO at reel 014705, frame 0725. The assignee on the face page of Baekelmans is also Cisco Technology, Inc. and the same assignee is identified in USPTO assignment records for Baekelmans at reel 012789, frame 0498.

Further, at the time that the invention presented in the present application was made, all inventors were under an obligation to assign any later patent application to Cisco Technology, Inc., so that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

Baekelmans qualifies as a reference by date only under 35 U.S.C. §102(a) or (e) and not 102(b). The present application was filed on November 13, 2003. Baekelmans is an issued US patent that was filed on April 12, 2002 and issued on July 18, 2006, without an intervening publication. Thus, Baekelmans is effective under 35 U.S.C. §102(e) based on its filing date of as of April 12, 2002, which is earlier than November 13, 2003, but is not effective under §102(a) or §102(b) because its date of patenting and publication of July 18, 2006 is later than November 13, 2003.

Therefore, all requirements of 35 U.S.C. §103(c)(1) are satisfied in the present case with respect to Baekelmans, and Baekelmans is ineligible as a reference. Applicants respectfully request reconsideration and removal of Baekelmans as a reference.

A combination of Baekelmans with Menard is the only combination of references asserted to reject all claims. Thus, when Baekelmans is removed as a reference under 35 U.S.C. § 103(c), the Office Action does not state a *prima facie* case of unpatentability for any claim.

The applicants alerted the Office to this exact issue in applicants' prior reply of December 24, 2007, at page 14. Because applicants identified and overcame the identical issue in a prior reply, and the Office's oversight of the issue necessitated this reply, applicants respectfully suggest that any future Office Action that rejects claims should be a non-final action.

### III. CONCLUSIONS & MISCELLANEOUS

For the reasons set forth above, all of the pending claims are now in condition for allowance. The Examiner is respectfully requested to contact the undersigned by telephone relating to any issue that would advance examination of the present application.

A petition for extension of time, to the extent necessary to make this reply timely filed, is hereby made. If applicable, a check for the petition for extension of time fee and other applicable fees is enclosed herewith. If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

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